

FILE COPY

152

U. S. Supreme Court, U. S.

FILED

JUN 26 1947

CHARLES ELMORE GOSLEY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

795431

Rec'd. 6/26

---

No. 154

---

ALEXANDER AKERMAN,

*Petitioner,*

*vs.*

THE UNITED STATES

---

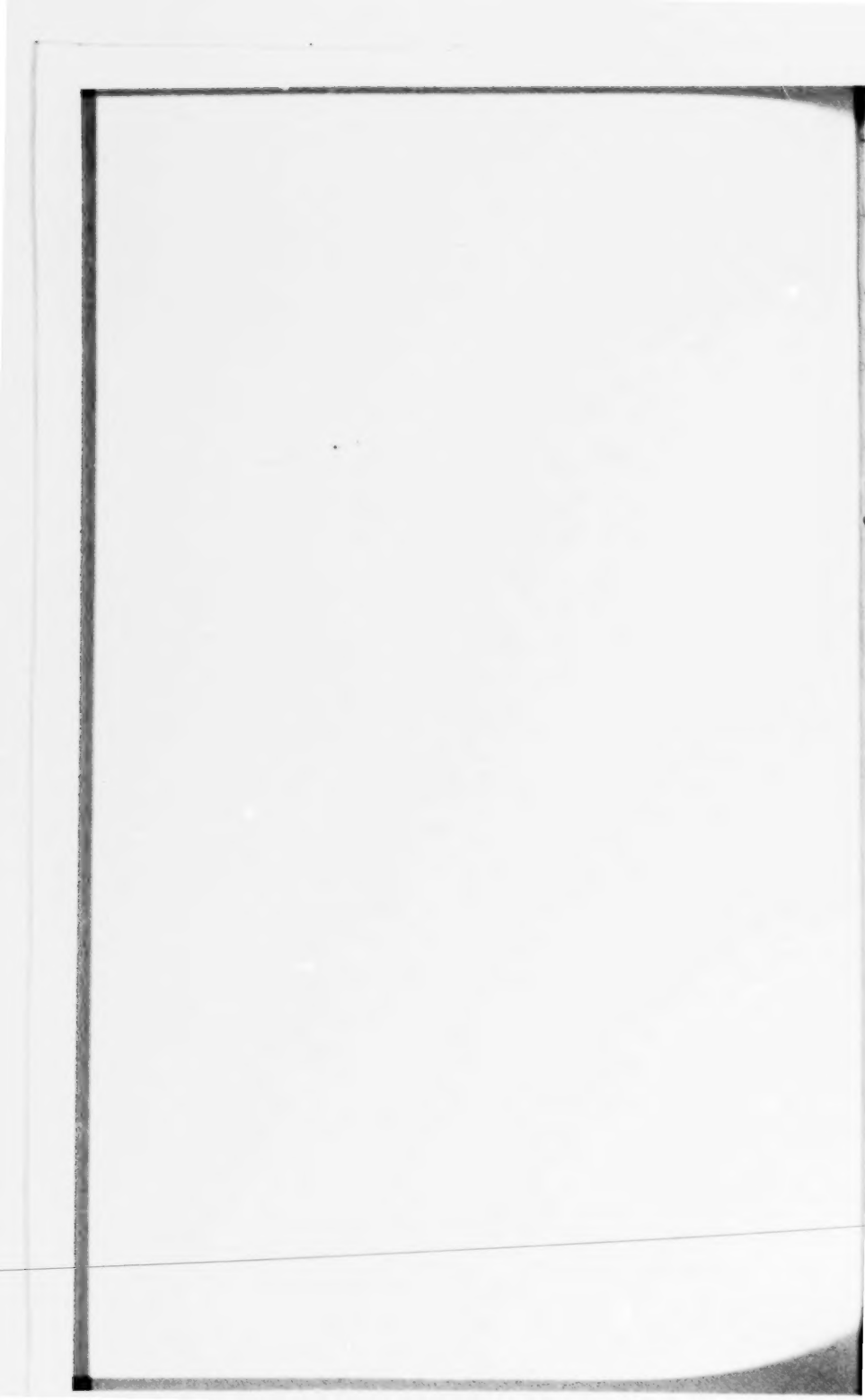
PETITION FOR WRIT OF CERTIORARI TO THE  
COURT OF CLAIMS AND BRIEF IN SUPPORT  
THEREOF.

---

✓  
✓ ROBERT H. ANDERSON,

JOHN J. CARMODY,

*Counsel for Petitioner.*



## INDEX

### SUBJECT INDEX

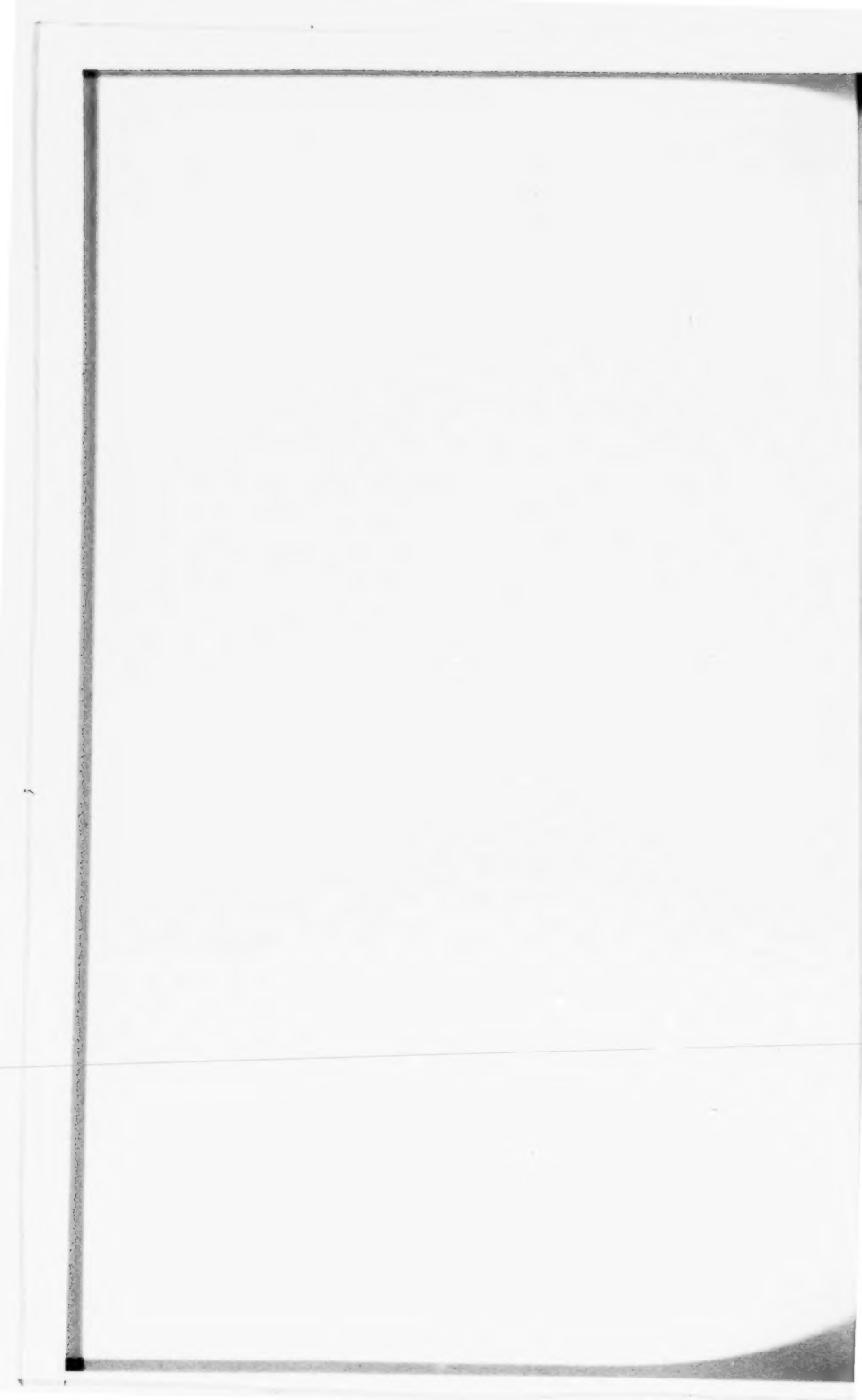
	Page
Petition for writ of certiorari .....	1
Summary and short statement of matter in- volved .....	2
Basis of jurisdiction .....	3
Relevant parts of statutes involved (see Appen- dix A) .....	3
Question presented .....	3
Reason for the allowance of the writ .....	3
Brief in support of petition .....	5
Statement of case .....	5
Specification of error to be urged .....	5
Argument .....	5
Conclusion .....	8

### CASES CITED

<i>Booth v. United States</i> , 291 U. S. 339 .....	3, 6
<i>Caminetti v. United States</i> , 242 U. S. 470 .....	7
<i>United States v. Shreveport Grain &amp; E. Co.</i> , 287 U. S. 77 .....	7

### STATUTES CITED

Act of February 13, 1925 (Chapter 229, Sec. 3b, 43 Stat. 939), as amended by the Act of May 22, 1939 (Chapter 140, 53 Stat. 752), now Title 28, Sec. 288, U. S. Code .....	3
Act of July 31, 1946 (S. 920, Chapter 704, Public Law 567, 79th Congress) .....	3
Judicial Code, Section 2 (Title 28, Sec. 5, U. S. Code) .....	2, 6
Judicial Code, Section 260 as amended (Title 28, Sec. 375, U. S. Code) .....	2, 5



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

---

**No. 154**

---

ALEXANDER AKERMAN,

*Petitioner,*

*vs.*

THE UNITED STATES,

*Respondent*

---

**PETITION FOR WRIT OF CERTIORARI TO THE  
COURT OF CLAIMS**

---

*To the Honorable Chief Justice and Associate Justices of  
the Supreme Court of the United States:*

Petitioner prays that a writ of certiorari issue to review a judgment entered by the Court of Claims of the United States on June 2, 1947, in a cause therein pending in which petitioner was plaintiff and the United States of America was defendant (Case Number 47,654). The Court of Claims, with one judge dissenting, sustained a demurrer to the petition and dismissed it. The opinion of the Court is not reported but is printed in the record at pages 5 to 10. The dissent appears in the record at pages 10 to 12 inclusive.

### **I. Summary and Short Statement of Matter Involved**

Petitioner, on February 15, 1929, after having been appointed by the President of the United States and confirmed by the Senate, was duly commissioned as United States District Judge for the Southern District of Florida during good behavior. He thereupon entered into the discharge of the duties of his office and performed the same until October 9, 1939, when, having attained the age of seventy, he retired pursuant to the provisions of Section 260 of the Judicial Code as amended (Title 28, Section 375, U. S. Code). Despite his retirement, the petitioner continued to perform the duties of a United States District Judge, in the manner provided by law, in many causes in the District Court for the Southern District of Florida, and elsewhere, as more particularly set out in his petition in the Court of Claims (R. 1-5). In fact, he has been called upon to perform, since his retirement, virtually the same duties as he had performed prior thereto.

At the time of petitioner's retirement there was in effect Section 2 of the Judicial Code as amended (Title 28, Section 5, U. S. Code), which fixed the salaries of United States District Judges at \$10,000 a year, and that sum was paid to him after his retirement. On July 31, 1946, the Congress of the United States enacted and the President approved S. 920, wherein it was provided that salaries shall be paid to each of the judges of the several district courts at the rate of \$15,000 per year *in lieu of* the salaries now provided by law. Notwithstanding the provisions of this Act, the United States refused to pay petitioner more than \$10,000 a year, whereupon he brought suit in the Court of Claims for compensation at the increased rate. The Court sustained the respondent's demurrer to his petition and dismissed it (R. 13).

## **II. Basis of Jurisdiction**

Jurisdiction is invoked under the Act of February 13, 1925 (Chapter 229, Section 3b, 43 Stat. 939), as amended by the Act of May 22, 1939 (Chapter 140, 53 Stat. 752), now Title 28, Section 288, U. S. Code. This application is timely made as the judgment was entered on June 2, 1947 (R. 13).

## **III. Relevant Parts of Statutes Involved**

See Appendix A.

## **IV. Question Presented**

The question presented is whether or not a retired United States District Judge is entitled to increased compensation at the rate of \$15,000 per year provided for District Judges by the Act of July 31, 1946 (S. 920, Chapter 704, Public Law 567, 79th Congress), in lieu of the salary of \$10,000 per year currently being paid.

## **V. Reason for the Allowance of the Writ**

A substantial Federal question is involved, namely, the status of retired Federal judges and the compensation to which they are entitled and the decision of the Court of Claims is in conflict with the decision of this Court in *Booth v. United States*, 291 U. S. 339, which is controlling, but was not followed by the Court of Claims.

As this Court pointed out in the *Booth* case, "It is common knowledge that retired judges have, in fact, discharged a large measure of the duties which would be incumbent on them, if still in regular active service." These retired judges who are continuing to play a substantial role in the administration of justice in this country deserve a full

hearing by this Court on the justice of their claim for compensation equal to that of their younger brethren.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the Court of Claims should be granted.

Respectfully submitted,

ROBERT H. ANDERSON,  
JOHN J. CARMODY,  
*Counsel for Petitioner.*



## BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

### I. Statement of Case

As the petition for writ of certiorari contains a statement of the basis of jurisdiction and of the question involved, as well as a statement of the material facts, they are not, in the interest of brevity, repeated here.

### II. Specification of Error to Be Urged

The Court of Claims erred:

1. In holding that the Judicial Salary Act of July 31, 1946, S. 920, Public Law 567, does not apply to petitioner, a retired judge.

2. In undertaking to construe this statute and to resort to aids of interpretation in so doing.

3. In sustaining defendant's demurrer to the petition and dismissing the case.

### III. Argument

*The Court of Claims erred in holding that the Judicial Salary Act of July 31, 1946, S. 920, Public Law 567, does not apply to petitioner, a retired judge.*

At the time of Judge Akerman's retirement there were on the statute books two Acts of Congress that related to the compensation of District Judges:

1. The Judicial Retirement Act (28 U. S. C. 375) providing that "any judge \* \* \* may retire upon the salary of which he is then in receipt."<sup>1</sup>

<sup>1</sup> Manifestly this provision was designed to conform to Article III, Section 1, of the Constitution, prohibiting the diminution of the compensation of judges during their continuance in office. The *Booth* case, 291 U. S. 339 (1934), had not been decided and there was some doubt as to whether a retired judge was protected by the constitutional provision.

2. Title 28, Section 5, U. S. Code, providing that "each of the district judges \* \* \* shall receive a salary of \$10,000 a year to be paid in monthly installments."

Both of these statutes dealt with compensation of District Judges who retired and, therefore, both of them affected petitioner.

There is no more reason why Congress could not or should not increase the one than the other.

Thereupon the Act of July 31, 1946 (S. 920) was passed. It expressly and specifically provided:

"That the following salaries shall be paid to the several judges hereinafter mentioned *in lieu of* the salaries now provided by law, namely:

\* \* \* \* \*

"To each of the judges of the several district courts, \* \* \* at the rate of \$15,000 per year."

This Act clearly superseded Section 5 of Title 28 fixing the salaries of District Judges at \$10,000 a year.

May it not have superseded the Retirement Act also? The 1946 Act provided that there should be paid to the judges of the several district courts the sum of \$15,000 per year *in lieu of* the salaries now provided by law, therefore, the only question as far as the petitioner was concerned, is:

Was he one of the judges of the several district courts?

This question had been settled by this Court in *Booth v. United States*, 291 U. S. 339.

*The Court erred in undertaking to construe this statute and to resort to aids of interpretation in so doing.*

The Court of Claims erred in the construction that it placed upon the 1946 statute. Indeed, it erred in undertaking to construe this statute at all and to resort to aids

of interpretation in so doing. The language was plain and admitted of no more than one meaning, and the duty of interpretation did not arise because there was no ambiguity.

*Caminetti v. United States*, 242 U. S. 470;

*United States v. Shreveport Grain & E. Co.*, 287 U. S. 77.

Even so the Court of Claims went far beyond the permissible use of legislative committee reports. It did not confine itself to reports on the Bill that passed and became a law (S. 920). The reports on that Bill contained not one word that will support the construction placed on the Act by the Court below. It resorted to a House Committee Report on another Bill than the one that was passed, a Bill that was never even considered by the House and never reached the Senate. There is not a thing in this record to show that the Committee Report on the House Bill was ever brought to the attention of other House members than those on the Committee and, perhaps, not to them. It is clear that this report was never before the Senate.

And the basis of the Court's construction is in a footnote at the very conclusion of the Committee Report, not anything in the report itself. The body of the report specifically describes the judges included in it and those who are not. There is nothing here to indicate that retired judges were to be excluded.

When the Bill came before the Senate for consideration amendments were adopted that removed exceptions in the original Bill,<sup>2</sup> *manifesting an intention to make the Bill applicable to every member of the judiciary.*

---

<sup>2</sup> The original Bill did not apply to the Virgin Islands and the Tax Court.

Even before the Senate amendments, the report to that body recited:

“The purpose and effect of the Bill is to provide for a \$5,000 increase in the annual salary of *each member of the Federal judiciary, etc.*”

The controlling reason assigned for the legislation was the well known increased cost of living. In fact, that was its only justification. That this affected the so-called retired judges as well as the active ones goes without saying.

*The Court Erred in Sustaining Defendant's Demurrer to the Petition and Dismissing the Case*

The demurrer admits all facts well pleaded to be true and the Court erred in sustaining the same and dismissing the case.

#### IV. Conclusion

For the foregoing reasons it is respectfully submitted that the Petition for Writ of Certiorari should be granted.

ROBERT H. ANDERSON,  
JOHN J. CARMODY,  
*Counsel for Petitioner.*

**APPENDIX A****I**

The Judicial Retirement Act, Section 260, Judicial Code (Title 28, Section 375, U. S. Code):

“When any judge of any court of the United States, appointed to hold his office during good behavior, resigns his office after having held a commission or commissions as judge of any such court or courts at least ten years, continuously or otherwise, and having attained the age of seventy years, he shall, during the residue of his natural life, receive the salary which is payable at the time of his resignation for the office that he held at the time of his resignation. But, instead of resigning, any judge other than a justice of the Supreme Court, who is qualified to resign under the foregoing provisions, may retire, upon the salary of which he is then in receipt, from regular active service on the bench, and the President shall thereupon be authorized to appoint a successor; but a judge so retiring may nevertheless be called upon by the senior circuit judge of that circuit and be by him authorized to perform such judicial duties in such circuit as such retired judge may be willing to undertake, or he may be called upon by the Chief Justice and be by him authorized to perform such judicial duties in any other circuit as such retired judge may be willing to undertake or he may be called upon either by the presiding judge or senior judge of any other such court and be by him authorized to perform such judicial duties in such court as such retired judge may be willing to undertake.”<sup>3</sup>

(Mar. 3, 1911, Ch. 231, § 260, 36 Stat. 1161; Feb. 25, 1919, ch. 29 § 6, 40 Stat. 1157; Mar. 1, 1929, ch. 419, 45 Stat. 1422.)

---

<sup>3</sup> The remaining portions of this Act are not deemed relevant.

## II

District Judges' Salary Act, Section 2, Judicial Code  
(Title 28, Section 5, U. S. Code) :

"Each of the district judges, including the judges in Puerto Rico, Hawaii, and Alaska exercising Federal jurisdiction, shall receive a salary of \$10,000 a year, to be paid in monthly installments. (Mar. 3, 1911, ch. 231, § 2, 36 Stat. 1087; Feb. 25, 1919, ch. 29, § 1, 40 Stat. 1156; Dec. 13, 1926, ch. 6, § 1, 44 Stat. 919; May 17, 1932, ch. 190, 47 Stat. 158.)"

## III

Judicial Salary Act of 1946 (S. 920) :

"That the following salaries shall be paid to the several judges hereinafter mentioned in lieu of the salaries now provided by law, namely :

\* \* \* \* \*

"To each of the judges of the several district courts, including the associate justices of the District Court of the United States for the District of Columbia and the judges in Puerto Rico, Hawaii, the Virgin Islands, and Alaska exercising Federal Jurisdiction, at the rate of \$15,000 per year."<sup>3</sup>

(Public Law 567, 79th Congress, Chapter 704, 2d Session.)